

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
TWENTY-FIRST JUDICIAL CIRCUIT
STATE OF MISSOURI

STATE OF MISSOURI, ex rel.)	
JEREMIAH W. (JAY) NIXON,)	
Attorney General,)	
)	
Plaintiff,)	
)	Cause No: 02CC-000576
vs.)	
)	Division: 23
WILLIAM R. GORDON,)	
)	
WESLEY GORDON,)	
)	
and)	
)	
PORTLOCK ENTERPRISES)	
d/b/a Denny's Towing,)	
)	
Defendants.)	

CONSENT JUDGMENT, ORDER AND DECREE

COMES NOW Plaintiff State of Missouri, at the relation of Attorney General Jeremiah W. (Jay) Nixon, by and through his Assistant, Jared R. Cone, and Defendants William R. Gordon, Wesley Gordon and Portlock Enterprises d/b/a Denny's Towing (Defendants), personally and through counsel, and request this Court to approve the Consent Judgment on the following terms:

I. GENERAL

1. **Jurisdiction.** This Court has jurisdiction over the parties and the subject matter of this Consent Judgment. The Court has the power to enter this Consent Judgement pursuant to § 407.100, RSMo 2000¹ and does so with the consent of the parties.

2. **Suit.** The Attorney General has filed a Petition in this action against Defendants alleging that Defendants violated certain provisions of Chapter 304 and Chapter 407.

3. **Settlement.** The Attorney General and Defendants have determined that it is in their mutual interest to resolve the claims raised against Defendants in the Action through entry of this Consent Judgment.

4. **Severability.** If any provision or provisions of this Consent Judgment is or are declared invalid by a court of competent jurisdiction, the remainder of the Consent Judgment shall remain in full force and effect and shall not be affected by such declaration.

5. **Non-Approval.** Defendants shall not represent to any person, natural or otherwise, that the Attorney General, by entry of this Consent Judgment, sanctions, endorses or approves of any methods, acts, uses, practices or solicitations undertaken by or on behalf of Defendants at any time.

6. **Consultation with Counsel.** Defendants state that they have had adequate opportunity to consult with legal counsel, understand their rights, and agree to be bound by all provisions contained herein, waiving any right to appeal or trial.

7. **Fair and Adequate Settlement.** Having read and understood the terms and conditions of this Consent Judgment, the parties and the Court agree that the Consent Judgment constitutes a

¹All references to statutes are to Missouri Revised Statutes 2000, unless otherwise stated.

fair, just and adequate resolution of all of the Attorney General's claims against Defendants set forth in the Action.

8. Presentation to the Court. The Attorney General and Defendants agree that Plaintiff may present this Consent Judgment to the Court for approval ex parte.

9. Notice and Waiver of Service. The Attorney General and Defendants agree that execution of this Consent Judgment constitutes actual notice of the terms and provisions of the Consent Judgment, and thus Defendants expressly waives service of a copy thereof.

II. DEFINITIONS

10. "Advertisement," including the terms "advertise" and "advertising," shall mean the attempt by publication, dissemination, solicitation, circulation, or any other means to induce, directly or indirectly, any person to enter into any obligation.

11. "Defendants" means Defendants Portlock Enterprises, doing business as Denny's Towing, William R. Gordon, and Wesley Gordon, and shall include any of their agents, employees, representatives, predecessors, successors, assigns, and trustees.

12. "Person" shall mean any natural person or his legal representative, partnership, firm, for profit or not for profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or beneficiary thereof.

13. "Sale" including the terms "sell" and "selling," shall mean any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or on credit.

14. "Consensual Tow" shall mean only those tows originating expressly at the request and with the authorization of the owner of the motor vehicle being towed.

15. "Non-consensual tow" shall mean any tow other than a consensual tow.

III. INJUNCTIVE PROVISIONS

16. Defendants are enjoined, for a period of three (3) years from the date of execution of this Consent Judgment, from, either directly or indirectly, advertising non-consensual towing services and offering to tow, or actually towing, motor vehicles from public or private property without the express prior authorization of the vehicle owner, in the State of Missouri.

17. Defendants are permanently enjoined from:

- a. charging for towing and storage of motor vehicles in excess of posted maximum rates, in violation of §§ 304.157.1(1) and 304.158.6;
- b. removing abandoned motor vehicles from private property without the owner of the private property being present, in violation of § 304.158;
- c. selling or otherwise disposing of abandoned motor vehicles without first making application for title with the Department of Revenue, in violation of § 304.156;
- d. failing to notify the owners and lienholders of abandoned motor vehicles, within five (5) working days, of (i) the fact that the motor vehicle was received, (ii) the grounds for removal, and (iii) the location to which the motor vehicle was removed, in violation of § 304.158;
- e. requiring motor vehicle owners to sign a form releasing Defendants for liability for damaging the motor vehicle before the owner is able to view and inspect the vehicle, in violation of § 304.158.2(1); and
- f. changing vehicle assessment forms to indicate that any damage to a motor vehicle caused by Defendants, either while in transit or in storage, was present before Defendants towed or stored the vehicle, in violation of § 304.158.2(1).

IV. JUDGMENT AND PAYMENT PROVISIONS

A. Costs of Investigation and Attorney's Fees

18. The Court hereby orders the defendants to pay the Missouri Merchandising Practices Revolving Fund the sum of Ten Thousand Dollars (\$10,000.00) for costs of investigation and attorney's fees, the payment of which shall be suspended so long as the defendants remain in compliance with each and every term of this Consent Judgment. In the event the defendants fail to pay restitution as set forth in Paragraph IV.A below, or violate any of the injunctive provisions of Paragraph III.17 above, the payment in Paragraph IV.19 shall be due immediately.

B. Restitution And Other Related Orders

19. The Court finds it necessary and appropriate to order Defendants to pay restitution to consumers.

20. Judgment is hereby entered in the sum of Eight Thousand Dollars (\$8,000.00) for restitution. This Court orders Defendants, jointly and severally, to pay said restitution sum to the Missouri Merchandising Practices Restitution Fund to be distributed by the Attorney General. Restitution shall be paid by cashier's checks, money orders or checks from counsel's escrow account as follows:

- a. A minimum of One Thousand Dollars (\$1,000.00) concurrent with execution of this Consent Judgment;
- b. A minimum of One Thousand Dollars (\$1,000.00) per month, due on or before the fifteenth day of each month, for each month following execution of this Consent Judgment until the entire balance is paid in full;

c. In the event the defendants are able to sell any property in a month such that the proceeds exceed the \$1,000.00 minimum monthly payment, the entire proceeds shall be paid toward the restitution amount that month and the amount in excess of \$1,000.00 shall be credited against the next month's payment; and

d. Beginning on or before the third Monday following approval of this Consent Judgment by the Court, and continuing on or before every other Monday thereafter until all restitution has been paid, Defendants shall provide to the Office of the Missouri Attorney General a notarized statement, on a form to be provided by the Office of the Missouri Attorney General, describing all sales of property during that period of time. The description shall include the item(s) sold and the price(s) at which the item(s) was/were sold. The report may be mailed to Jeffrey M. Schmersahl, Investigator, Office of the Missouri Attorney General, 720 Olive Street, Suite 2150, St. Louis, MO 63101 or hand-delivered to Jeffrey M. Schmersahl at 111 North 7th Street, Suite 204, St. Louis, MO 63101.

In the event Defendants fail to make the restitution payments as set forth in this Paragraph, the entire balance shall be due and payable immediately.

21. Defendants shall not collect or attempt to collect payment from consumers whose automobiles were towed by Defendants and for which Defendants do not hold valid title.

V. MISCELLANEOUS

22. Nothing in this Consent Judgment shall be deemed to permit or authorize any violation of the laws of the State of Missouri or otherwise be construed to relieve Defendants of any duty to comply with the applicable laws, rules and regulations of the State of Missouri, nor shall anything herein be deemed to constitute permission to engage in any acts or practices prohibited by the laws, rules or regulations of the State of Missouri including Section 407.020. All stipulated remedies herein are cumulative to those that are permitted by the laws, rules or regulations of the State of Missouri including Section 407.020.

23. Violations. A violation of any of the terms or conditions of this Consent Judgment, Order and Decree from this date forward shall constitute a violation for which civil penalties of not more than Five Thousand Dollars (\$5,000.00) per said violation of this Consent Judgment may be sought against Defendants by the Attorney General pursuant to Section 407.110.

24. If Defendants have misrepresented any material fact in connection with this Consent Judgment, such misrepresentation shall be considered a violation and breach of the Consent Judgment and Chapter 407.

25. Costs. All Court costs expended or incurred in this cause are hereby adjudged against Defendants.

The undersigned parties have stipulated and consented to the entry of this Consent Injunction and Judgment.

PORTLOCK ENTERPRISES,
ALSO KNOWN AS,
DENNY'S TOWING

JEREMIAH W. (JAY) NIXON
Attorney General

By: William R. Gordon, President

By: Jared R. Cone, 35520
Assistant Attorney General
Laclede Gas Building
720 Olive Street, Suite 2150
St. Louis, Missouri 63101
Telephone: (314) 340-6816
Facsimile: (341) 340-7957

Subscribed and sworn to before me this
day of _____, 2003.

Notary Public

My commission expires:

WILLIAM R. GORDON

By: William R. Gordon

Subscribed and sworn to before me this ____ day
of _____, 2003.

Notary Public

My commission expires:

WESLEY GORDON

By: Wesley Gordon

Subscribed and sworn to before me this ____ day
of _____, 2003.

Notary Public

My commission expires:

APPROVED AND SO ORDERED, this ____ day of _____, 2003.

Hon. Robert L. Campbell
Senior Judge